

Virginia, Washington, and Wyoming; Connecticut, Illinois, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to State and local government employees only.

This final rule results in more stringent requirements for the work it covers. Therefore, States and Territories with approved State Plans must adopt comparable amendments to their standards within six months of the promulgation date of this rule unless they demonstrate that such amendments are not necessary because their existing standards are at least as effective in protecting workers as this final rule.

F. Unfunded Mandates Reform Act

OSHA reviewed this final rule according to the Unfunded Mandates Reform Act of 1995 ("UMRA"; 2 U.S.C. 1501 *et seq.*) and Executive Order 12875 (58 FR 58093, Oct. 28, 1993). As discussed above in section V.B of this preamble ("Summary of the Final Economic Analysis, and Regulatory Flexibility Analysis"), the Agency estimates that compliance with this rule will require private-sector employers to expend about \$154.1 million each year. However, while this rule establishes a Federal mandate in the private sector, the Agency's standards do not apply to State, local, or Tribal governments except in States that have elected voluntarily to adopt a State Plan approved by the Agency. Consequently, this final rule does not meet the definition of a "Federal intergovernmental mandate" (*see sec. 421(5) of the UMRA (2 U.S.C. 658(5))*). However, the rule imposes costs of over \$100 million per year on the private sector, and is thus subject to the requirement under UMRA for review of private sector costs. That requirement is met in section V.B. of the preamble.

G. Applicability of Existing Consensus Standards

Some of the types of equipment subject to this final standard are addressed by current national consensus standards in the ASME B30 series, including: ASME B30.5–2004, "Mobile and Locomotive Cranes"; ASME B30.6–2003, "Derricks"; ASME B30.8–2004, "Floating Cranes and Floating Derricks"; ASME B30.3–2004, "Construction Tower Cranes"; ASME B30.14–2004, "Side Boom Tractors"; and ASME B30.2–2001, "Overhead and Gantry Cranes." In addition, ASME B30.7–2005, "Base-Mounted Drum Hoists," addresses a type of equipment that is often a component of derricks, and ASME B30.23–2005, "Personnel Lifting Systems," addresses issues that are

covered by § 1926.1431, *Hoisting personnel*.

The Committee consulted these ASME standards (or the most current versions available at the time) and other resources in developing its proposal. In most instances, the ASME standards that the Committee consulted were entered into the docket, including: ASME B30.5–2000 (OSHA–S030–2006–0663–0334); ASME B30.5a–2002 Addenda (OSHA–S030–2006–0663–0335); ASME B30.6–2003 (OSHA–S030–2006–0663–0337); ASME B30.17–2003 (OSHA–S030–2006–0663–0338); ASME B30.3–1996 (OSHA–S030–2006–0663–0353); and ASME B30.23–1998 (OSHA–S030–2006–0663–0354). When newer versions of the ASME standards were issued after the Committee finished its work, OSHA examined the updated standards to determine if the provisions of the updated standards deviated in a significant way from provisions on which the Committee relied. OSHA entered the updated standards into the record of this rulemaking. For the most part, OSHA did not find significant deviations between the updated versions and the versions reviewed by the Committee. In the few instances in which deviations occurred, OSHA identified those deviations and asked for public comment on any issues raised.

As discussed in detail in the Summary and Explanation of the standard, a number of provisions in this final rule contain concepts that are similar to the concepts underlying the various ASME standards. However, the Committee determined that, in most instances, the wording of the provisions in these ASME standards needed revision to improve the enforceability, clarity, and ease of use.

For some issues, the ASME standards do not address issues covered by this final rule, or the Committee determined that a different approach was necessary. For example, in the provisions on inspections (§§ 1926.1412 and 1926.1413), the Committee concluded that shift, monthly, and annual inspection intervals are most appropriate, in contrast to the ASME approach, which uses "frequent" and "periodic" intervals. In the provisions addressing assembly/disassembly (§§ 1926.1403 through 1926.1406) and the encroachment-prevention provisions for power lines (§§ 1926.1407 through 1926.1411), the Committee adopted approaches with no comparable counterparts in the ASME standards.

In some instances, the Committee determined that it was appropriate to incorporate ASME standards by reference, in whole or in part. For

example, in § 1926.1433 (*Design, construction and testing*), the rule incorporates by reference ANSI B30.5–1968, safety code for "Crawler, Locomotive, and Truck Cranes," PCSA Std. No. 2 (1968), for crawler, truck and locomotive cranes manufactured prior to the effective date of this final rule, and incorporates portions of ASME B30.5a–2004, "Mobile and Locomotive Cranes," for mobile cranes (including crawler and truck cranes) and locomotive cranes manufactured on or after the effective date of this final rule.

List of Subjects in 29 CFR Part 1926

Construction industry, Incorporation by reference, Occupational safety and health, Safety.

VI. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210, directed the preparation of this notice. The Agency is issuing this final rule under the following authorities: Sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*); Section 4 of the Administrative Procedure Act (5 U.S.C. 553); Secretary of Labor's Order No. 5–2007 (72 FR 31159, Jun. 5, 2007); and 29 CFR part 1911.

Signed at Washington, DC, on July 16, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

VII. Amendments to Standards

■ For the reasons stated in the preamble of this final rule, the Agency is amending 29 CFR part 1926 to read as follows:

PART 1926—[AMENDED]

Subpart A—General

■ 1. The authority citation for subpart A of 29 CFR part 1926 is retained as follows:

Authority: Sec. 3704, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 6–96 (62 FR 111), or 5–2007 (72 FR 31160) as applicable; and 29 CFR part 1911.

■ 2. Section 1926.6 is added to read as follows: